

In the High Court of Judicature at Madras

Dated : 25.7.2007

Coram :

The Honourable Mr. Justice K. RAVIRAJA PANDIAN
and
The Honourable Mr. Justice P. P. S. JANARTHANA RAJA

W.P.No.14804 of 2002
W.P.M.P.No.19895 of 2002

V. Shanmugam Petitioner

Vs.

1. The Tamil Nadu Taxation Special Tribunal
rep. By The Registrar
Singaravelar Maligai
Chennai 1.

2. The State of Tamil Nadu
rep. By the Secretary
Department of (CT) and Religious Endowments
Fort St. George, Chennai 9.

3. The Appellate Assistant Commissioner (CT)
Vellore.

4. The Commercial Tax Officer
Thiruvannamalai. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying for the issuance of a Writ of certiorari to call for the records
of the 4th respondent in R.C.No. B1/2088/98 dated 5.2.1999 and quash the
same.

For Appellant :- Mr. D. Naveen Durai Babu
For Respondents :- Mr. Haja Nazirudeen
Special Govt. Pleader (Taxes)

ORDER

(Order of the Court was made by K.RAVIRAJA PANDIAN, J.)

By filing this writ petition, the petitioner challenged the assessment order dated 5.2.1999. The petitioner is a Public Works Department Contractor carrying on building Contract works. Through the enforcement wing of the respondent department, it was brought to the notice of the assessing officer that the petitioner has constructed building to the Public Works Department and received the amount for having carried out the construction of the building for the assessment year 1996-97 in a sum of Rs.7,33,305/-. When the enforcement wing officers approached the petitioner on 30.9.1997, the petitioner accepted by his statement dated 30.9.1997 that the work has been carried out by him and the consideration for the same has been received. However, he has not produced any details for the purchase of materials so as to find out whether the materials purchased by the petitioner has already suffered tax. The regular assessing officer, the fourth respondent herein called upon the assessee to produce the books of accounts for the purpose of completing the assessment for the year 1996-97 on more than three occasions by issuance of summons one on 18.5.1998, the second on 23.6.1998 and the last on 6.8.1998. Though all these summons were duly received by the petitioner, but the petitioner did not respond to the same. Therefore, the assessing officer proposed to complete the assessment on the basis of the available materials under Section 3(B) of the TNGST Act after allowing due exemption as per the provisions of the Act. A notice dated 18.8.1998 containing the proposal was served on the petitioner on 9.10.1998. In the meanwhile further details about the construction put up by the petitioner on behalf of Public Works Department during the year 1996-97 for the value of Rs.,3,63,581/- has also come to the knowledge of the assessing officer. Hence, the assessing officer once again issued a revised pre-assessment notice on 7.12.1998. The petitioner appeared before the assessing officer and admitted that he is not having accounts for the above construction of the building. He further admitted that he has effected the purchase of building materials and used the same in the execution of the building works. The Statement was recorded on 30.9.1997. Based on the above materials, including the statement given by the petitioner and giving details as to the proposal including the penalty to be levied on the petitioner, a notice dated 19.8.1998 has been issued to the petitioner which has been served on 9.10.1998 and finalised the assessment by imposing a tax under Section 3B of the TNGST Act in a sum of Rs. 80,802. The said amount has been arrived at after giving 30% deduction as per Section 3B of the TNGST Act, which provides as follows:-

Section 3-B Levy of tax on the transfer of goods involved in works contract - (1) Notwithstanding anything contained in sub-sections (2-B), (3), (4), (7) and (8) of Section 3, or section 7-a but subject to the other provisions of this Act including the provisions of

sub-section (1) of Section 3, every dealer referred to in item (vi) of clause (g) of section (2) shall pay, for each, year a tax on his taxable turnover of transfer of property in goods involved in the execution of works contract at the rates mentioned in sub-section (2), (2-A) or (2-C) of section 3, or as the case may be, in section 4.

Explanation:- Where any works contract involves more than one item of work, the rate of tax shall be determined separately for each such item of work.

(2) The taxable turnover of the dealer of transfer of property involved in the execution of works contract shall on and from the 26th day of June 1986, be arrived at after deducting the following amounts from the total turnover of that dealer :-

- (a).....
- (b).....
- (c).....
- (d).....

(e) all amounts towards 'labour charges and other like charges' not involving any transfer of property in goods, actually incurred in connection with the execution of works contract, or such amounts calculated at the rate specified in column (3) of the Table below, if they are not ascertainable from the books of accounts maintained and produced by a dealer before the assessing authority.

THE TABLE

Serial number	Type of works contract	Labour or other charges as a percentage value of the works contract
1	Electrical Contracts	15
2	All Structural Contracts	15
3	Sanitary Contracts	25
4	Watch and/or clock repair contracts	50
5	Dyeing contracts	50
6	All other contracts	30

2. Thus from the facts as narrated above, we find no illegality or irregularity in determining the tax payable by the petitioner in the assessment order. In addition to the tax so arrived at the assessing officer has also levied penalty under Section 12(3)(b)(v) of the Act, which provides that in addition to the tax assessed under sub-section (1)

or (2) the assessing authority shall in the same order of assessment passed under sub-section (1) or (2) or by a separate order, direct the dealer to pay by way of penalty a sum of one hundred and fifty percent of the difference of the tax assessed and the tax paid as per the return, if the tax paid as per the return, falls short of the tax assessed on the final assessment by more than seventy five percent. From the facts narrated above, we are of the view that clause (v) is not applicable. Section 12(3)(a) provides that where there is failure on the part of the dealer to submit return, the penalty payable is 150% of the tax assessed and the tax paid. Hence the provision quoted can only be stated to be not correct. However, in respect of the amount of penalty imposed, there cannot be any difference. It is also well established legal principle that wrong quoting of the provision cannot be pleaded. For the foregoing reasons, we do not find any reason to grant the relief as prayed for in this writ petition. The writ petition is dismissed. Consequently, the connected W.P.M .P is also dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Krr/

To

1. The Registrar
The Tamil Nadu Taxation Special Tribunal
Singaravelar Maligai
Chennai 1.
2. The Secretary
Department of (CT) and Religious Endowments
Fort St. George, Chennai 9.
3. The Appellate Assistant Commissioner (CT)
Vellore.
4. The Commercial Tax Officer,
Thiruvannamalai.

+ 1 CC To Mr. R.Mahadevan, Advocate SR NO.46465

+ 1 CC to the Spl. Government Pleader SR NO 46432

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